

CONSERVATION COMMISSION

REGULATIONS

SECTION 7 - PERMITS and CONDITIONS

**7.1 - General principles**

Lands within 100 feet of Wetland Resource Areas (200 feet in the case of rivers and perennial streams)(also known as Upland Buffer Zone Resource Areas) are presumed important to the protection of wetland resources because activities undertaken in close proximity to Wetland Resource Areas have a high likelihood of adverse impact upon those Wetland Resource Areas, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, nutrient runoff, vegetation change, and loss of wildlife habitat.

The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover in part or all of the Upland Buffer Zone Resource Area and set other conditions thereupon.

A growing body of evidence suggests that even "no disturbance" areas reaching 100 feet from Wetland Resource Areas are insufficient to protect many important Wetland Resource Area characteristics and values. Thus, in general, the Commission discourages any work or activity within 100 feet of Wetland Resource Areas (200 feet in the case of rivers and perennial streams) and encourages applicants to pursue reasonable alternatives outside of the Upland Buffer Zone Resource Area whenever possible.

In the case of new subdivisions, reasonable alternatives include reconfiguring or reducing the number of lots so that no permanent structures will be built in any Upland Buffer Zone Resource Area or Wetland Resource Area on any lot. In other words, the Commission will not permit permanent structures within 100 feet of a Wetland Resource Area or within 200 feet of a river or perennial stream in the case of subdivisions created after March 29, 2003.

#### **7.2 - Requirement of continuous naturally vegetated buffer strip**

If work within the Upland Buffer Zone Resource Area is approved by the Commission, the Commission may require that the applicant maintain a continuous naturally vegetated buffer strip within the Upland Buffer Zone Resource Area with the aim of minimizing adverse impact to the Wetland Resource Area. This naturally vegetated buffer strip will be a minimum of 50 feet in width (100 feet in the case of rivers and perennial streams).

Depending on the particular characteristics of the site, the Commission may require more than 50 feet (100 feet in the case of rivers and perennial streams) of naturally vegetated buffer. These characteristics include slope, soil characteristics, type of vegetation, surface hydrology, the relative size of the wetland, buffer and surrounding watershed, and the position of the wetland within the watershed, and whether the wetland is an Outstanding Resource Water pursuant to 314 CMR 4.06.

If the total amount of new impervious and semi-pervious surface area created by a project within the Upland Buffer Zone Resource Area is greater than 400 square feet or is closer than 70 feet from the Wetland Resource Area (or 120 feet in the case of rivers or perennial streams), the Commission will require the

applicant to provide clear and convincing evidence that the project will not have significant adverse impact on any adjoining Wetland Resource Area.

Activities prohibited in the naturally vegetated buffer strip shall include construction of buildings, sheds, garages or other accessory structures, swimming pools, tennis courts, septic systems, installation of lawn, removal of trees or shrubs, placement of wood chips or bark mulch, dumping of leaves or lawn refuse, grading, removal of naturally occurring leaf litter and debris, and other landscaping activities which interfere with the naturally occurring vegetation of the area. With respect to septic systems, a permit from the Board of Health will not necessarily preclude the Commission from denying a permit for a septic system in order to preserve a naturally vegetated buffer strip.

Removal of exotic invasive species and/or planting of native species of vegetation in the naturally vegetated buffer strip may be permitted with the prior approval of the Commission. This permission shall be requested and granted in writing.

Footpaths through the naturally vegetated buffer strip may be permitted as long as they are no wider than 3 feet, minimize disturbance to the natural vegetative cover, are not covered with asphalt, gravel, wood chips, or other material, and do not encroach upon Wetland Resource Areas.

### **7.3 - Previously altered Upland Buffer Zone Resource Areas**

In the case of lots where the Upland Buffer Zone Resource Areas has previously been altered, the Commission may require mitigation in the form of plantings to enhance an existing vegetated buffer or to create additional vegetated buffer before allowing any further alteration in any part of the Upland Buffer Zone Resource Area.

### **7.4 - Temporary disturbance**

The Commission may permit temporary disturbance in a naturally vegetated buffer strip in cases where the applicant has proven to the Commission's satisfaction that no harm is likely to result to the Upland Buffer Zone Resource Areas as a result of the temporary disturbance. Once the activity is completed, the area will be allowed to return to natural vegetation and function. The Commission will establish specific time frames and conditions for allowing temporary disturbances, and will set criteria for assessing the successful return of the naturally vegetated buffer strip to natural functions. Any subsequent disturbance or activity will require a new application.

### **7.5 - Information**

Depending upon the scope of the project, the Commission may require that the applicant provide adequate information regarding the following so as to enable the Commission to evaluate whether any form of permanent or temporary disturbance is appropriate:

- 1) Values and functions of the Wetland Resource Area or Upland Buffer Zone Resource Areas.
- 2) Pre-project characteristics of the site, i.e. slope, soil type, vegetation cover, etc.

- 3) Wildlife habitat and rare species present on the site.  
Wildlife habitat serves a variety of functions in support of wildlife. Food, water, breeding space, shelter, security, movement and migration space, and connections to other habitat areas are all important. All of these wildlife habitat functions are presumed to exist in all resource areas.
- 4) The character of the activities proposed.
- 5) Reasonably practicable alternatives to the proposed activities, including reducing the scale and scope of the project. Options that appear to be precluded only by self-imposed constraints shall be considered as reasonably practicable alternatives.

The Conservation Commission may deny a permit if the applicant fails to provide the information requested.

"Information" in this instance includes site visits by the Commission and its staff or representatives for the purpose of directly observing pre-project and post-project conditions on the property, at seasonally appropriate times.

#### **7.6 - Permanent markers**

In cases where the Commission is concerned about the possibility of future owners encroaching on resource areas, the Commission may require the placing of permanent markers to indicate the boundaries of the naturally vegetated buffer strip, and may require that the boundaries of and prohibitions on activities in the naturally vegetated buffer strip be expressed in covenants in all deeds to succeeding owners of the property or of portions thereof.

### **7.7 - Deed restriction**

In cases where the Commission believes it is important for future owners to be put on notice regarding a naturally vegetated buffer strip, the Commission may require an applicant to execute and record a Grant of Restriction in a form acceptable to the Commission and the Town Counsel, identifying the land to remain naturally vegetated, and referencing any other perpetual conditions required by the Commission.

### **7.8 Permanent Structures in Upland Buffer Zone Resource Areas**

In order to avoid adverse impacts to Wetland Resource Areas and Upland Buffer Zone Resource Areas, the Commission may require all permanent structures to remain outside the Upland Buffer Zone Resource Area. In certain cases, e.g. where there is already an existing structure within a Wetland Resource Area or Upland Buffer Zone Resource Area, or in the case of a legal building lot created prior March 29, 2003, the Commission, in order to avoid hardship to the property owner, may permit structures or additions to structures within the Upland Buffer Zone Resource Area. In such cases, the Commission may require mitigation in the form of plantings to enhance an existing vegetated buffer or to create additional vegetated buffer before allowing any further alteration in any part of the Upland Buffer Zone Resource Area.

These regulations adopted by the Lincoln Conservation Commission on December 17, 2003 and revised on May 2, 2007.

---

Jim Meadors & Peter von Mertens, Co-Chairs